



April 21, 2008

CONTAINS CONFIDENTIAL BUSINESS INFORMATION
VIA E-MAIL AND US MAIL

Ms. Candace Bias
Missouri Department of Natural Resources
Hazardous Waste Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, Missouri 65102-0176

Re: Wal-Mart Stores, Inc.
Response to Notice of Violation #5580E

Dear Ms. Bias:

We have been retained by Wal-Mart Stores, Inc. ("Wal-Mart") to respond to the Missouri Department of Natural Resources' ("MDNR") March 24, 2008 Notice of Violation #5580E ("NOV") issued to Wal-Mart in connection with the Green Leaf, L.L.C. ("Green Leaf") facility in Neosho, Missouri. Wal-Mart is committed to the protection of health, safety and the environment and to conducting its business in compliance with all environmental, health and safety laws. Wal-Mart desires to cooperate with MDNR with respect to this matter and will act in good faith to resolve the issues identified in the NOV in an expeditious manner. As Wal-Mart is continuing to actively investigate this matter, we will supplement this response as additional information is made available.

Background

As a part of Wal-Mart's business operations, the condition of products that Wal-Mart offers for sale at its retail stores sometimes become such that, while the product is usable for its intended purpose, it is not appropriate for sale at a Wal-Mart retail store. For example, bags of potting soil and charcoal that are faded by the sun, or containers that are dented would not be in a condition which Wal-Mart will sell in its retail stores and Sam's Clubs. In addition, due to Wal-Mart's generous return policy, often perfectly usable product is returned by customers to Wal-Mart. While still in a condition that can be used, the product may not be suitable for sale at a Wal-Mart retail store or Sam's Club (e.g., label frayed, box corner crushed). Because of this,

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Wal-Mart generates a certain amount of "return"^{1/} products at its retail stores that it must give away, dispose of, or send back to its return centers for appropriate management. The vast majority of Wal-Mart's return goods would not be hazardous if they were to be disposed of.

In 2006, Green Leaf, a sister company of a long-time vendor to Wal-Mart, approached Wal-Mart with a plan to use/resell some of Wal-Mart's "return" products for their intended purposes. After discussions, Wal-Mart contracted with Green Leaf in 2006 to have Green Leaf use/resell a portion of Wal-Mart's "return" products, such as charcoal, potting soil, grass seed, fertilizer and pesticides, that Wal-Mart retail stores had determined to be inappropriate for sale at Wal-Mart's retail stores but could still be used for their intended purposes. By using these products for their intended use, the products avoided being unnecessarily disposed of in landfills (or through other methods of disposal). Based upon its prior dealings with Green Leaf's sister company and its discussions with Green Leaf regarding the use/resale concept, Wal-Mart expected Green Leaf to manage the products appropriately in order to use/resell them and that Green Leaf had markets for these products. By way of example, Wal-Mart is aware that Green Leaf obtained pesticide registrations and worked with The Scotts Company LLC ("Scotts") in connection with reselling the products. It is also Wal-Mart's understanding from Green Leaf that a large volume of material sent to Green Leaf by Wal-Mart has been sold/distributed by Green Leaf for its intended use.

With this background, Wal-Mart provides the following responses to the specific allegations set forth in the NOV.

Responses to Allegations

1. Failure of a generator of a solid waste to determine if that waste is a hazardous waste.

As described above, Wal-Mart's arrangement with Green Leaf was established in order to have Green Leaf use/resell product from Wal-Mart that was usable for its intended purpose, but was not Wal-Mart retail-ready. Wal-Mart intended to ship Green Leaf only product that was usable, and did not intend to send Green Leaf any material that could be considered a waste. Wal-Mart considered material going to Green Leaf to be commercial product and understood that it was destined for use as such. Accordingly, Wal-Mart does not believe that it was a "generator" of solid waste such that Wal-Mart had a duty to determine if it was hazardous waste.

Wal-Mart has a nationwide program in effect at its retail and return center locations to determine whether products that are unsuitable for sale in Wal-Mart's retail stores can be used for their intended purpose or, conversely, disposed of as waste. [REDACTED]

^{1/} As used in this letter, "return" products include not only products returned from a Wal-Mart customer, but also products which have never been sold to a customer and are in a condition such that they are not suitable to be sold at a Wal-Mart retail store or Sam's Club, but can still be used for their intended purposes.

Similar to the retail stores, Wal-Mart return centers employ specific procedures in handling returned product. As return centers unload items from the retail stores, their employees scan the items' identification codes to determine whether the items should be returned to the manufacturer, donated to charity, disposed as a solid waste, or shipped to a third party such as Green Leaf for use. At the return centers, Wal-Mart employees (or employees of Exel, the third party operator of three Wal-Mart return centers) examine each individual item to assess how it should be handled. An item that can not be returned to the vendor, resold at a discount, donated, or that may have been damaged in transit is properly managed and disposed by the return center. In the event that an item is among the small percentage of items that is determined to be hazardous waste, the return center will dispose of the item using a licensed hazardous waste hauler. Materials that can be used for their intended purpose

^{2/} Pursuant to RSMo. §§ 260.430.1 and 260.550, the Guide and the bracketed language in the text of this letter are confidential and proprietary information of Wal-Mart in that the information contained therein outlines a process known only to Wal-Mart and developed solely for the use of Wal-Mart. Maintaining the confidentiality of such information will not result in an unreasonable threat to the health of humans or other living organisms and disclosure is not required under any federal hazardous waste management act. As such, Wal-Mart requests that MDNR maintain the confidentiality of the bracketed language and the Guide and that it does not disclose either to any other person or entity.

are prepared for shipment to the appropriate outlet. Specifically with respect to the product that was shipped to Green Leaf, the return centers would either place the individual products into large cardboard boxes or palletize the items, and Green Leaf would have the boxes or pallets containing the products transported to its facility.

With regard to the pesticides and aerosol cans identified in the NOV, such products were provided to Green Leaf in their original consumer containers. Wal-Mart employees were instructed not to ship leaking containers of pesticides or defective aerosol containers to Green Leaf. As discussed further in response to NOV item no. 3 below, it is Wal-Mart's understanding that Green Leaf distributed many of these products to its customers in the original containers and the products were used for their original intended purposes. As such, these products would not be considered solid wastes, and therefore would not be hazardous wastes. Specifically with regard to liquid pesticides, Wal-Mart had originally contracted with Green Leaf in 2006 for Green Leaf to use/resell liquid pesticides. As a result, Wal-Mart sent liquid pesticides in their original consumer containers to Green Leaf. In 2007, Green Leaf notified Wal-Mart that it no longer wished to take liquid pesticides, and Wal-Mart instructed its return centers to stop sending liquid pesticides to Green Leaf.

The NOV also states that "192, 55-gallon drums of liquid pesticides received by Green Leaf were then sent off site of disposal, not recycling." Consistent with Wal-Mart's understanding, Greenleaf has confirmed that Wal-Mart never shipped drums of liquid pesticides to Green Leaf. Wal-Mart is continuing to investigate this allegation, but believes that it only tendered to Green Leaf liquid pesticides in their original consumer containers. Wal-Mart believes the material was product when Green Leaf received it from Wal-Mart.

2. Failure of a generator of hazardous waste to utilize an authorized hazardous waste treatment/storage/disposal or resource recovery facility.

As discussed in detail above, Wal-Mart believes it sent product, not waste, to Green Leaf for use/resale. Therefore, Wal-Mart did not violate this provision of Missouri law.

3. Facility not able to demonstrate legitimate recycling.

While Wal-Mart believes it did not violate this regulatory provision,^{3/} Wal-Mart submits the following to demonstrate that its shipments of product to Green Leaf constituted legitimate use.

^{3/} Wal-Mart does not believe that the regulation identified in the NOV has been invoked until the issuance of this NOV; and as such, it has not violated a requirement to demonstrate legitimate recycling. MDNR has alleged that Wal-Mart is in violation of 40 C.F.R. § 261.2(f) (incorporated by 10 C.S.R. 25-4.261). This provision states:

Respondents in actions to enforce regulations implementing subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation.

Green Leaf represented to Wal-Mart that it had the capability to use/resell the products sent to it. Based upon Green Leaf's representations, Wal-Mart viewed this arrangement as positively impacting the environment to facilitate use of product rather than sending it to a landfill or incinerator. Wal-Mart has been informed by Green Leaf that Green Leaf worked with Scotts on the projects and obtained approximately twenty-five U.S. EPA pesticide registrations under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") to distribute the pesticide products. Green Leaf has informed Wal-Mart that it sold/distributed hundreds of tons of materials from its facility and continues to fill orders with material not subject to the stop-sale order issued by the Missouri Department of Agriculture. Wal-Mart has reviewed a number of Green Leaf's FIFRA registrations, but Wal-Mart does not currently have copies of Green Leaf's FIFRA registrations or sale/distribution documentation. However, Wal-Mart has requested such information from Green Leaf and will supply it to MDNR as a supplement to this response.

Specifically with regard to pesticides, including liquid pesticides, Wal-Mart tendered pesticide products to Green Leaf in their original consumer packaging, and Wal-Mart has been informed by Green Leaf that some of these were distributed by Green Leaf to Green Leaf's customers in those containers. Green Leaf has also informed Wal-Mart that the products were used by Green Leaf's customers for their intended purpose, and that Green Leaf has records of these transactions. The records should demonstrate that the products were used for their intended purpose, and were not solid waste.

With respect to aerosols, Wal-Mart tendered aerosols to Green Leaf in their original containers, and it is Wal-Mart's understanding from Green Leaf that Green Leaf distributed them to customers in their original consumer containers for their intended use.

Wal-Mart is continuing to investigate how these products were handled and distributed by Green Leaf and will supplement this response as additional information is made available.

Actions Taken/To be Taken

Currently, Wal-Mart has suspended its arrangement of shipping products to Green Leaf. As a result of this suspension, the Wal-Mart return centers developed a backlog of products which would have been sent to Green Leaf. To address this backlog, Wal-Mart retained EQ, an environmental contractor specializing in hazardous material management, to assist in reviewing these products so Wal-Mart could manage them appropriately. The process of reviewing the products entailed scanning each individual item using Wal-Mart's computer program (discussed above). This scanning process was supervised by an EQ technician who visually reviewed the products to validate that the Wal-Mart

Until the issuance of this NOV, Wal-Mart has not been a "respondent in an action to enforce regulations implementing subtitle C" and therefore had no duty under this regulation to demonstrate that material it sent to Green Leaf is a solid waste. As a result, it is impossible for Wal-Mart to have violated this regulation as alleged in the NOV. Moreover, since this regulation merely sets forth a burden of proof a respondent must meet in an enforcement action, rather than imposing a substantive requirement, it raises the question whether anyone can be charged with violation this regulation.

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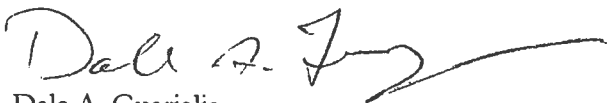
program was working correctly. Wal-Mart has identified outlets to either use or donate much of the products which would not be hazardous waste. Items which are nonhazardous, but for which an appropriate use cannot be found, are to be sent to a landfill or incinerator (as appropriate). Wal-Mart is managing the small percentage of hazardous items (that cannot be used or donated) as hazardous waste by shipping them to an appropriate TSD facility. In addition, Wal-Mart plans to review its reverse distribution program and make any necessary refinements to its program.

Wal-Mart has met with Green Leaf in an attempt to understand how Green Leaf intends to handle the products and the material subject to the stop-sale order which remain at Green Leaf's facilities. Wal-Mart understands that Green Leaf has submitted a waste characterization plan to MDNR and that it is waiting for MDNR approval to begin characterizing and disposing of material that may be considered hazardous waste. Wal-Mart plans to keep apprised of this process and work closely with Green Leaf and MDNR, as it desires to see that this material is appropriately managed.

As previously stated, Wal-Mart desires to cooperate with MDNR to promptly correct any noncompliance and resolve this matter. Wal-Mart is appreciative of the one-week extension of time afforded by MDNR to respond to the NOV. Wal-Mart's policy is to conduct its business in a socially responsible and ethical manner that protects the environment. Wal-Mart would like to schedule a meeting with MDNR to further discuss these issues and hopefully resolve this matter through the "conference, conciliation and persuasion" process as offered by the Missouri Hazardous Waste Management Law. Wal-Mart is continuing to actively investigate this matter and will supplement this response as more information becomes available. Please feel free to call me if you have any questions or desire further information.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dale A. Guariglia", with a long horizontal flourish extending to the right.

Dale A. Guariglia

DAG
Attachment